

N.D.A.G. Letter to Meier (March 25, 1988)

March 25, 1988

Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, ND 58505

Dear Secretary of State Meier:

Thank you for your letter of March 25, 1988, concerning Manhattan National Life Insurance Company and Surety Mutual Life Insurance Company. Both of these life insurance companies have a specific corporate existence time period listed within their original articles of incorporation. I am told that the applicable law at the time these companies incorporated required such time periods to be specifically stated as opposed to the allowance of perpetual existence. Unfortunately, the time periods have expired with respect to both companies without knowledge to company officials.

N.D.C.C. § 10-19.1-127 states that a corporation whose period of duration provided in its articles of incorporation has expired and which has continued to do business despite the expiration may reinstate its articles and extend the period of corporate duration by filing an amendment to the articles within one year after the date of expiration. For both Manhattan National Life Insurance Company and Surety Mutual Life Insurance Company, the one-year period provided for by N.D.C.C. § 10-19.1-127 has expired.

It is my opinion that the one-year reinstatement provision within N.D.C.C. § 10-19.1-127 allows for the extension of corporate duration as a matter of right within this period of time. However, I do not read this statute to state that the failure to reinstate within the one-year period prohibits the corporation from reinstating its articles by amending the articles at a later date. Instead, the failure to reinstate within one year simply means that the corporation does not have the right to automatic reinstatement and extension of corporation existence.

I believe that the Secretary of State possesses the necessary discretion to allow the reinstatement of articles of incorporation by way of an amendment to those articles of a corporation whose period of duration and one-year grace period provided for within N.D.C.C. § 10-19.1-127 has expired. This conclusion results from the statutory provision allowing the liberal use of amendments to articles of incorporation "at any time" (N.D.C.C. § 10-19.1-17) as well as case law favoring the liberal interpretation of corporate revival statutes and discouraging the forced dissolution of corporations. Midland Financial Corp. v. Wis. Dept. of Rev., 328 N.W.2d 866 (Wis. Ct. App. 1982), aff'd, 341 N.W.2d 397 (Wis. 1983); KBM, Inc. v. MacKichan, 386 N.W.2d 914 (N.D. 1986).

Additionally, the fact that a corporation whose time of duration has expired has not been

legally dissolved justifies action taken to reinstate its corporate existence through an amendment to its articles of incorporation. Such a corporation retains its corporate existence in fact if not in law. As a result of the lack of dissolution, the corporation's existence continues and the Secretary of State may, in his discretion, accept amended articles providing for perpetual existence.

In exercising this discretion, you may consider the various equities involved in the matters involving the two insurance companies previously identified. An equity of particular importance is that of the effect upon the shareholders of these corporations by the failure to reinstate the articles of incorporation and to extend the corporate existence of these corporations. You, of course, are also free to consider the impact on any other person or entity. Absent any clear abuse of discretion, you have the final word on this matter under North Dakota law.

Sincerely,

Nicholas J. Spaeth

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